(N. Y.), 325; *Lewis v. Jewel*, 157 Mass., 345. So an action will lie for fraudulent misrepresentation made by a prospective purchaser of land as to its condition, etc., the land being at a distance from the place where the purchase was made, and the vendor being ignorant of its condition and value, and relying on the truthfulness of such representation. *Mountain v. Day*, 91 Minn., 249; *Hutchenson v. Gorman*, 71 Ark., 305. The representation which constitutes the inducement to purchase must relate to some material matter. *Nounan v. Luther Land Co.*, 81 Cal., 1; *Dingle v. Trash*, 7 Col., 16; *Helden v. Griffin*, 136 Mass., 239.

HUSBAND AND WIFE—ALIENATION OF AFFECTION—EFFECT OF DIVORCE.—HAMILTON V. MCNEILL, 129 N. W., 480 (IA.).—*Held*, that a divorce decree may be set up as a bar in a subsequent action between the guilty party and one who was not a party to the divorce action—the plaintiff in the present case was sueing the defendant for alienating the affections of the plaintiff's wife before the divorce was granted. The plaintiff here was the guilty party in the divorce action and the statute under which this suit was brought provided that the guilty party should lose his rights. Deemer and Ladd, J. J., *dissenting*.

The case under discussion is in opposition to the general American rule and it is generally held that a person cannot avail himself of a decree in an action to which he was not a party; *Robins v. Crutchley*, 1 Wills (Fed.), 124; 1 *Starkie on Ev.*, part 2, 62; and questions in a former action must have been litigated in point of fact, and passed on, to constitute a bar, even when the suit is between the same persons. *Bond v. Markstrum*, 102 Mich., 11. It was held a decree of divorce, *a mensa et thoro*, is not conclusive evidence of a woman's having left her husband's house unjustifiably. *Burleu v. Shannon*, 3 Gray (Mass.), 387, 1 *Greenl. Ev.*, 189. The general English view is in accord with the American and holds it to be a general rule that to make a judgment conclusive as a bar it must have been between the same parties. *Buller, Nisi Prius*, p. 232. There seems to be, however, some ground for the majority opinion in the case under discussion from the general rule that when a party suffers by reason of his own wrong he cannot complain of the result. *Wheeler v. Russell*, 17 Mass., 258; *2nd Chit. Cont.*, 975.

MASTER AND SERVANT—INJURY TO SERVANT—BURDEN OF PROOF.—OLSON V. NEBRASKA TELEPHONE CO. ET AL., 127 N. W., 916 (NEB.).—*Held*, that the court should not instruct the jury that the burden is upon the master to prove his servant was injured in consequence of a danger ordinarily incident to his employment. Sedgwick and Fawcett, J. J., *dissenting;* Letten, J., *dissenting in part.*

Mere proof of an accident to an employee is of itself insufficient to show negligence on the part of the employer. *Wojciechowski v. Spreckels Refining Co.*, 117 Pa. St., 57. Where there is a breaking of a machine in ordinary use, the law will not infer that there was a lack of care on the part of the master. *Green v. Southern Ry. Co.*, 72 S. C., 398. The burden is on the servant to prove that the appliance was defective and that the

master had notice thereof, or ought to have had. *Garden City Wire Spring Co. v. Boecker,* 94 Ill. App., 96; *Wiggins Ferry Co. v. Hill,* 112 Ill. App., 475. For the presumption is that the master has discharged his duty in providing for the employee suitable appliances for work, and the employee has the burden of proving not only negligence on the employer's part, but also due care on his own part. *Glasscock v. Swofford Bros. Dry Goods Co.,* 80 S. W., 364; *Johnson v. Chesapeake, etc., Ry. Co.,* 36 W. Va., 73. The same opinion is held in a long line of cases, including *Shamberger v. Somerset Chemical Co.,* 69 N. J. L., 234; *Brownfield v. Chicago, etc., Ry. Co.,* 107 Iowa, 254; *Dumphy v. St. Joseph Stockyard Co.,* 118 Mo. App., 506; *Byrd v. Blumenthal,* 3 Pennewill (Del.), 564.

NAVIGABLE WATERS—ACCESS TO WHARF—INTERFERENCE.—NORTHERN PAC. RY. CO. V. S. E. SLADE LUMBER CO., 112 PAC., 240 (WASH.).—*Held,* where the upland owner's wharf, built to the edge of deep water on tide lands, was purchased from the state, that his right to have vessels load at the wharf could not be enjoined without compensation by a railroad, whose adjoining drawbridge could not be operated while a vessel was lying at the wharf, though authorized by both state and national sanction. Rudkin, C. J., and Gose, J., *dissenting.*

The state, representing the public, is the absolute owner of the tide lands of navigable waters, subject only to the right of Congress to regulate interstate and foreign commerce. *Weber v. State Harbor Commrs.,* 85 U. S., 57; *People v. New York and S. I. Ferry Co.,* 68 N. Y., 71; *Providence v. Comstock,* 27 R. I., 537. But the upland owner has rights of navigation and also a right to wharf out to navigable waters as against all except the state and Congress. *Mobile Transp. Co. v. Mobile,* 153 Ala., 409; *Gregory v. Forbes,* 96 N. C., 77. The state, however, may without compensation to the upland owner regulate, limit, or even destroy, these rights, directly or by a franchise given to another, provided the public at large are benefited thereby, the loss or obstruction to the owner being *damnum absque injuria. Frost v. Washington County R. Co.,* 96 Me., 76; *Scranton v. Wheeler,* 179 U. S., 141. The owner, therefore, cannot be freed from an obstruction thus authorized by state or national authorities, except by a grant of the tide lands giving him exclusive rights. *People v. Kerber,* 152 Cal., 731; *Gough v. Bell,* 21 N. J. L., 156; *Illinois C. R. Co. v. Illinois,* 146 U. S., 387. Some decisions hold that any such grant by the state impliedly reserves, in addition to limitations imposed by national and state constitutions and statutes, the public rights as to navigable waters, the rights of the public not being affected by the change of title. *State v. Gerbing,* 56 Fla., 603; *State v. Coxe,* 144 N. Y., 396. Such grants will be construed strictly against the grantee. *Home for Aged Women v. Commonwealth,* 89 N. E., 124 (Mass.). Other decisions hold that the grantee will obtain absolute and exclusive rights of ownership, and no interference without compensation with his right of access will be permitted. *Jones v. Oemler,* 110 Ga., 202; *Langdon v. New York,* 93 N. Y., 129.

PROCESS—PUBLICATION—AFFIDAVIT.—FELSINGER V. QUINN, 113 PAC., 275 (WASH.).—*Held,* that an affidavit for publication must comply strictly